

EXHIBIT D

Miller, Thomas

From: Lemens, Andrew <ALemens@wc.com>
Sent: Monday, September 30, 2024 8:48 AM
To: Takashima, Edward; Miller, Thomas; Trefz, Katherine; DeWilde, Kristen; Metz, Carl; Pruski, Carol; Broecker, Kimberly; Castella, Tomas; Hodges, Kevin; Pitt, Jonathan
Cc: Hill, Melissa; Shackelford, Christina; Fleury, Jennifer; Steinberg, Shira; Herd, Colin; michael.jo@ag.ny.gov
Subject: RE: FTC et al v. Amazon, No. 23-cv-1495 - Virtual Deposition Protocol
Attachments: [FTC] Draft Virtual Depo Protocol (9.30 AMZ Edits)(11696779.6).docx; Change-Pro Redline - 2024-09-19 FTC v Amazon - Draft Virtual Depo Protocol and [FTC] Draft Virtual Depo Protocol (9 30 AMZ Edits)-11696779-v4.pdf

Ed,

Attached are Amazon's revisions to the draft protocol. Our revisions are intended to preserve Amazon's right to take in-person depositions as set forth in Rule 30(b)(4) and the Court's order in this case on deposition limits, see ECF 166 ¶ F. We believe that in-person testimony is more effective and will best allow Amazon to gather evidence to defend against Plaintiffs' claims, and that is how we plan to proceed. It remains unclear why Plaintiffs believe there is a basis or need to depart from the default procedure for in-person depositions in this case. As reflected in the protocol, we do not object to parties choosing to participate remotely in depositions—in a format we have defined as a "hybrid" deposition—but cannot agree that Amazon will forego its right to take in-person testimony. To the extent we have time on Tuesday's conferral after addressing the outstanding coordination issues, we will be prepared to address the draft protocol.

Best,
 Andrew

From: Takashima, Edward <etakashima@ftc.gov>
Sent: Friday, September 27, 2024 12:52 PM
To: Lemens, Andrew <ALemens@wc.com>; Miller, Thomas <tmiller2@ftc.gov>; Trefz, Katherine <KTrefz@wc.com>; DeWilde, Kristen <kdewilde@wc.com>; Metz, Carl <CMetz@wc.com>; Pruski, Carol <CPruski@wc.com>; Broecker, Kimberly <Kbroecker@wc.com>; Castella, Tomas <tcastella@wc.com>; Hodges, Kevin <KHodges@wc.com>; Pitt, Jonathan <JPitt@wc.com>
Cc: Hill, Melissa <mchill@ftc.gov>; Shackelford, Christina <cshackelford@ftc.gov>; Fleury, Jennifer <jfleury@ftc.gov>; Steinberg, Shira <ssteinberg1@ftc.gov>; Herd, Colin <cherd@ftc.gov>; michael.jo@ag.ny.gov
Subject: RE: FTC et al v. Amazon, No. 23-cv-1495 - Virtual Deposition Protocol

Andrew,

I'm following up again regarding our proposed remote deposition protocol. Can Amazon provide a response or counter-proposal by the close of business on Monday, September 30, so that at minimum we can discuss any questions we have about that on the meet and confer we have scheduled for Tuesday? If Amazon is going to maintain its objections to remote depositions, we again ask that you state the basis for your objections. Specifically, if Amazon contends that remote depositions will prejudice Amazon, please state the basis for that position so that we can consider it.

Thanks,

Ed

Edward H. Takashima
Senior Trial Counsel
Bureau of Competition
Federal Trade Commission
etakashima@ftc.gov
202-876-5704 (mobile)

From: Lemens, Andrew <ALemens@wc.com>
Sent: Monday, September 23, 2024 1:46 PM
To: Miller, Thomas <tmiller2@ftc.gov>; Trefz, Katherine <KTrefz@wc.com>; DeWilde, Kristen <kdewilde@wc.com>; Metz, Carl <CMetz@wc.com>; Pruski, Carol <CPruski@wc.com>; Broecker, Kimberly <Kbroecker@wc.com>; Castella, Tomas <tcastella@wc.com>; Hodges, Kevin <KHodges@wc.com>; Pitt, Jonathan <JPitt@wc.com>
Cc: Hill, Melissa <mchill@ftc.gov>; Takashima, Edward <etakashima@ftc.gov>; Shackelford, Christina <cshackelford@ftc.gov>; Fleury, Jennifer <jfleury@ftc.gov>; Steinberg, Shira <ssteinberg1@ftc.gov>; Herd, Colin <cherd@ftc.gov>; michael.jo@ag.ny.gov
Subject: RE: FTC et al v. Amazon, No. 23-cv-1495 - Virtual Deposition Protocol

Tom,

We are considering Plaintiffs proposal, including whether and when depositions taken entirely by remote means are appropriate in this action. Given that we only received Plaintiffs proposal on September 19, which was two weeks before the first deposition you seek to take by remote means on October 2, it appears that any time pressure could have been avoided. Nevertheless, we are working in good faith to provide a prompt response. As to the upcoming depositions, we will identify locations that minimize any burden on the witness, consistent with our obligations under the Federal Rules. To the concern about preserving government resources, and as I indicated in my prior correspondence with Melissa, Amazon has no objection if Plaintiffs (or any party in a coordinated action) wish to participate in these depositions remotely.

Best,
Andrew

From: Miller, Thomas <tmiller2@ftc.gov>
Sent: Friday, September 20, 2024 12:25 PM
To: Lemens, Andrew <ALemens@wc.com>; Trefz, Katherine <KTrefz@wc.com>; DeWilde, Kristen <kdewilde@wc.com>; Metz, Carl <CMetz@wc.com>; Pruski, Carol <CPruski@wc.com>; Broecker, Kimberly <Kbroecker@wc.com>; Castella, Tomas <tcastella@wc.com>; Hodges, Kevin <KHodges@wc.com>; Pitt, Jonathan <JPitt@wc.com>
Cc: Hill, Melissa <mchill@ftc.gov>; Takashima, Edward <etakashima@ftc.gov>; Shackelford, Christina <cshackelford@ftc.gov>; Fleury, Jennifer <jfleury@ftc.gov>; Steinberg, Shira <ssteinberg1@ftc.gov>; Herd, Colin <cherd@ftc.gov>; michael.jo@ag.ny.gov
Subject: RE: FTC et al v. Amazon, No. 23-cv-1495 - Virtual Deposition Protocol

Andrew,

Please let us know when we can expect a response or counter-proposal from Amazon. We think this is something the parties should be able to agree to in advance of the upcoming depositions. If Amazon is not willing to work towards that end, please let us know promptly. There is good cause to conduct depositions remotely to minimize the burden on third parties and conserve government resources, and Amazon has not identified any basis for its objections to remote depositions. Indeed, we asked you to explain the basis for your objection to these remote depositions more than a week ago, with no response. If Amazon contends that remote depositions will prejudice Amazon, please promptly state the basis for that position so that we can consider it.

Thanks,
Tom

Thomas J. Miller

(202) 460-4871

tmiller2@ftc.gov

From: Lemens, Andrew <ALemens@wc.com>

Sent: Friday, September 20, 2024 9:42 AM

To: Miller, Thomas <tmiller2@ftc.gov>; Trefz, Katherine <KTrefz@wc.com>; DeWilde, Kristen <kdewilde@wc.com>; Metz, Carl <CMetz@wc.com>; Pruski, Carol <CPruski@wc.com>; Broecker, Kimberly <Kbroecker@wc.com>; Castella, Tomas <tcastella@wc.com>; Hodges, Kevin <KHodges@wc.com>; Pitt, Jonathan <JPitt@wc.com>

Cc: Hill, Melissa <mchill@ftc.gov>; Takashima, Edward <etakashima@ftc.gov>; Shackelford, Christina <cshackelford@ftc.gov>; Fleury, Jennifer <jfleury@ftc.gov>; Steinberg, Shira <ssteinberg1@ftc.gov>; Herd, Colin <cherd@ftc.gov>

Subject: RE: FTC et al v. Amazon, No. 23-cv-1495 - Virtual Deposition Protocol

Tom,

I'm confirming receipt of Plaintiffs' draft protocol. We will consider the proposal with our client, but are unlikely to have a position on the timeline you articulate below. Assuming the non-party witnesses are able to produce documents in advance of depositions that Plaintiffs chose to notice in the coming weeks, we certainly don't want the negotiation of this protocol to keep those depositions from moving forward. And for the reasons set forth in my September 13 email to Melissa Hill, we see no reason why those depositions cannot proceed either in-person or in a hybrid fashion, as was the case with the coordinated non-party depositions that occurred earlier in June.

Best,
Andrew

From: Miller, Thomas <tmiller2@ftc.gov>

Sent: Thursday, September 19, 2024 2:04 PM

To: Trefz, Katherine <KTrefz@wc.com>; Lemens, Andrew <ALemens@wc.com>; DeWilde, Kristen <kdewilde@wc.com>; Metz, Carl <CMetz@wc.com>; Pruski, Carol <CPruski@wc.com>; Broecker, Kimberly <Kbroecker@wc.com>; Castella, Tomas <tcastella@wc.com>; Hodges, Kevin <KHodges@wc.com>; Pitt, Jonathan <JPitt@wc.com>

Cc: Hill, Melissa <mchill@ftc.gov>; Takashima, Edward <etakashima@ftc.gov>; Shackelford, Christina <cshackelford@ftc.gov>; Fleury, Jennifer <jfleury@ftc.gov>; Steinberg, Shira <ssteinberg1@ftc.gov>; Herd, Colin <cherd@ftc.gov>

Subject: FTC et al v. Amazon, No. 23-cv-1495 - Virtual Deposition Protocol

Counsel,

We have attached a proposed draft protocol governing the taking of virtual depositions. If Amazon is willing to negotiate a protocol, we think it is important to do so quickly given the upcoming third-party depositions in early October. Please let us know by Tuesday, September 24, whether Amazon will agree to this draft, or provide any proposed redlines. Please also let us know your availability for a meet and confer on September 25 (1:00 pm – 2:00 pm ET or after 3:00 pm ET).

Thanks,
Tom

Thomas J. Miller

Federal Trade Commission

Anticompetitive Practices II Division

Office: (202) 326-2663

Mobile: (202) 460-4871

tmiller2@ftc.gov

This message and any attachments are intended only for the addressee and may contain information that is privileged and confidential. If you have received this message in error, please do not read, use, copy, distribute, or disclose the contents of the message and any attachments. Instead, please delete the message and any attachments and notify the sender immediately. Thank you.